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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,546	01/07/2002	Kamran Loghman-Adham	07308.120	4853

7590

03/26/2003

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Bethesda, MD 20817

EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 03/26/2003

5

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
**10/036,546**

Applicant(s)  
**Loghman-Adham**

Examiner  
**Alton Pryor**

Art Unit  
**1616**



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Jan 9, 2003
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-20 is/are allowed.
- 6) ☒ Claim(s) 1-11 and 21-33 is/are rejected.
- 7) ☒ Claim(s) 12-14 is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2 6) ☐ Other:

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***Claim Rejection under 35 U.S.C. 112, 2nd paragraph***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 8 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claims 8,9 recite the limitation "said incapacitating agent" in line 1. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejection under 35 U.S.C. 102(b)***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 27-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Antoshkiw et al (US 4316917; 2/23/82). Antoshkiw teaches a stable carotenoid solution that is used in foods and beverages. Antoshkiw teaches that the non-toxic carotenoid solution can comprise from about 25 to about 35% propylene glycol dicaprylate-dicaprate. See abstract, column 1 lines 55-68, column 2 lines 41-47, claim 1. Although Antoshkiw does not specifically state that said glycol has a

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molecular weight between 100 and 500 and a vapor pressure below 1.0 mm Hg, these are inherent properties of propylene glycol dicaprylate-dicaprate.

***Claim Rejection under 35 U.S.C. 103(a)***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7,9-11,21-26,31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Todd, Jr. (US 5059437; 10/22/91), and JP 56089832; 7/21/81 in view of Antoshkiw as applied to claims 27-30 above. Antoshkiw teaches all that is recited in claims 27-33 except for the composition comprising glycerol tris(2-ethylhexanoate) and oleoresin of paprika. However, Todd teaches a color-stabilized paprika composition comprising propylene glycol esters of fatty acids and 48-49% oleoresin of paprika. See column 8 lines 19-23, Example 8. Todd teaches that the stabilized paprika composition stabilizes the color of foods. See column 2 line 55- column 4 line 47. On the other hand, JP '832 teaches a stable oil-in-water emulsion comprising 10 parts glycerol tris(2-ethylhexanoate). JP '832 teaches the addition of said oil-in-water emulsion to foods. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the composition taught by Antoshkiw to include an oleoresin of paprika and glycerol tris(2-ethylhexanoate). One would have been motivated to do this in order to enhance the stability

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of the food product to which the composition is added. With respect to the amounts and ratios of ingredients, one having ordinary skill in the art would have been expected to determine the optimum amounts and ratios through routine experimentation. One would have been motivated to do this in order to develop the most stable food product.

***Claim Objection / Allowable Subject Matter***

Claims 12-14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not teach or suggest the instant composition comprising propellant (carbon dioxide). Claims 15-20 are allowable. The prior art does not teach or suggest the instant composition of claims 15-20 existing as an aerosol.

***Restriction / Election Requirement***

The restriction requirement is withdrawn in light of Applicant's response filed 1/9/03. However, the Election requirement is maintained. Applicant elected the composition comprising glycerol tris(2-ethylhexanoate), oleoresin capsicum, propylene glycol dicaprylate/caprate and carbon dioxide. Examiner finds elected composition allowable. The prior art does not teach or suggest the elected composition comprising carbon dioxide. Search was extended beyond the elected composition. See art rejections above.

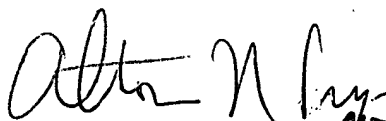
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***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton Pryor whose telephone number is (703) 308-4691. The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for this Group is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.



Alton Pryor

**ALTON N. PRYOR  
PRIMARY EXAMINER**

Primary Examiner, AU 1616

3/22/03